also the inherent jurisdiction of the court, are only to be exercised in cases where it is clear that the defences which have been put forward cannot really succeed, so that it may be proper to strike them out at such an early stage in the action. Unless that is reasonably plain, it is a jurisdiction which in practice is not exercised, and it is a jurisdiction which is exercised only with the greatest care."

Illuminating our minds with the light of these passages we are of the opinion that it would be wrong for this court to interfere with the judge's exercise of his discretion in the present case.

The appeal is dismissed with costs.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal dismissed.

Solicitors: *Cheang Lee & Ong.*

PUBLIC PROSECUTOR v. YEOH JOO HONG

[A.Cr.J. (Hepworth J.) March 31, 1965]

[Penang — Criminal Appeal No. 5 of 1965]

Infants and children — Suffering a child to take part in public entertainment — Meaning of "suffer" — Proof of mens rea — Unnecessary to prove actual knowledge — Children and Young Persons Ordinance, 1947, ss. 10(1), (3) and 11.

Theatres and Places of Public Amusement — Entertainment by infants and children — Suffering a child to take part in public entertainment.

The respondent was charged that he being the licensee of a singing troupe did suffer a child under the age of 12 years and a child under the age of 17 years to take part in a public entertainment in contravention of section 10(1) and section 10(3) respectively of the Children and Young Persons Ordinance. He was acquitted on the ground that the prosecution had failed to prove *mens rea*. The Public Prosecutor appealed.

Held: (1) it was unnecessary to prove actual knowledge that the children had taken part in the public entertainment; it was sufficient if such knowledge could be inferred from the facts that have been proved;

(2) in this case such an inference could be drawn from the facts and therefore the case should be remitted to the magistrates' court for the respondent to be called upon for his defence.

Cases referred to:—

(1) *Public Prosecutor* v. *Lim Teik Heng* [1962] M.L.J. 364.

(2) *Redgate* v. *Haynes* (1875-76) 1 Q.B.D. 89.

(3) *Bosley* v. *Davies* (1875-76) 1 Q.B.D. 84.

(4) *Somerset* v. *Hart* (1883-84) 12 Q.B.D. 360.

CRIMINAL APPEAL.

Wan Ismail bin Wan Mohamed Salleh (Deputy Public Prosecutor) for the appellant.

C. O. Lim for the respondent.

Hepworth J.: The respondent was charged in the magistrate's court, Penang, with two offences as follows:—

"(1) That you on 21.8.64 at about 8.40 p.m. at the New World Park, Swatow Lane, Penang, being the licensee of the Equinox Singing Troupe did suffer Lim Boon Heng, a child under the age of 12 years to take part in a public entertainment in contravention of section 10(1) of the Children & Young Persons Ordinance No. 33/47 and have thereby committed an offence punishable under section 11 thereof.

(2) That you on 21.8.64 at about 8.40 p.m. at the New World Park, Swatow Lane, Penang, being the licensee of the Equinox Singing Troupe did suffer Lim Kim Hock, a child under 14 years old and under the age of 17 years as reckoned under the Children & Young Persons Ordinance No. 33/47 to take part in a public entertainment without a licence issued by the Commissioner for Labour as required by section 10(3) of the Children & Young Persons Ordinance No. 33/47 and have thereby committed an offence punishable under section 11 thereof."

At the conclusion of the prosecution case the learned magistrate acquitted and discharged the respondent without calling upon him for his defence. From this order the Public Prosecutor appealed.

It was argued on behalf of the respondent in the magistrate's court that the use of the word "suffer" required the prosecution to prove *mens rea*. In support of this argument learned counsel for the respondent had quoted the case of *Public Prosecutor* v. *Lim Teik Heng*.[1] It was submitted for the defence that the prosecution had failed to prove *mens rea* and the learned magistrate agreed.

The Public Prosecutor appealed on the ground that the learned magistrate had erred in law in that he applied a wrong principle when he held that the prosecution must prove actual knowledge on the part of the respondent. The prosecution had submitted that on the facts the respondent's knowledge could be implied.

It was argued by the learned Deputy Public Prosecutor on the appeal that constructive knowledge was sufficient and he quoted *Redgate* v. *Haynes*,[2] *Bosley* v. *Davies*,[3] and *Somerset* v. *Hart*.[4] He submitted that had the learned magistrate applied his mind to these authorities and the evidence he would have come to a different conclusion.

Learned counsel for the respondent argued that the authorities quoted by the learned Deputy Public Prosecutor were more in the respondent's favour than otherwise, and that there was a close analogy between the present case and *Lim Teik Heng's* case. He submitted that there must be proof of an act of "suffering" on the licensee's (the respondent's) part, and in this case there was none.

The respondent was the manager of the New World Park, Swatow Lane, Penang. He applied on the 4th August, 1964, under the Theatres and Places of Public Amusement Enactment, 1958, for a licence in respect of a troupe of performers known as the Equinox

Singing Troupe and a licence, dated the 15th August, 1964, was issued covering the period the 15th to the 22nd August, 1964, in his name.

On the 13th August, 1964, the respondent applied to the State Commissioner for Labour, Penang, for a licence permitting one Matthew Lim, that is Lim Boon Heng, the subject of the first charge, to perform as a member of the Equinox Singing Troupe. The same day the State Commissioner for Labour, Penang, replied refusing the respondent's application and referring him to section 10 of the Children and Young Persons Ordinance, 1947, (hereinafter referred to as the Ordinance). Lim Boon Heng was 8 years and 1 month old in August, 1964.

Sub-section (1) of section 10 of the Ordinance reads as follows:—

"(1) No child under the age of twelve shall take part in a public entertainment which is promoted or performed for the profit of the promoter or performers or both."

Sub-section (3) of section 10 of the Ordinance reads as follows:—

"(3) No child or young person under the age of seventeen years shall take part in any public entertainment without the licence of the Commissioner."

Lim Kim Hock, the subject of the second charge, was 14 years and 2 months old in August, 1964. No application for a licence under the Ordinance was at any time made by anyone to enable him to appear as a member of the Equinox Singing Troupe.

It was conceded that both Lim Boon Heng and Lim Kim Hock had taken part in a public entertainment at the time and place and in the circumstances alleged in the charges. The sole question was whether the respondent had suffered them to take part.

The three authorities quoted by the learned Deputy Public Prosecutor were all cases in which gaming had been carried on on licensed premises. The question in each case was whether the landlord had "suffered" it. In *Redgate* v. *Haynes, supra* Blackburn J. said:—

"I agree that the mere fact that gaming was carried on on her premises would not render her liable to be convicted, because that is not 'suffering' the gaming to be carried on, and if the justices were of a different opinion they were wrong; but I think, if she purposely abstained from ascertaining whether gaming was going on or not, or, in other words, connived at it, that this would be enough to make her liable; and I think that when the landlady goes to bed she is still answerable for the conduct of those whom she leaves in charge of the house, and if those persons connive at the gaming, she is responsible".

Lush J. in the same case said:—

"I agree that it is not necessary that actual knowledge of the gaming should be proved.....I think that connivance on the part of the landlady or the person in charge would be quite sufficient".

In *Bosley* v. *Davies, supra* it was held that though actual knowledge on the part of the appellant or his servants, in the sense of seeing or knowing of, the card playing, was not necessary to be shown, yet that some circumstances must be proved from which it could be inferred that they connived at what was going on.

In *Somerset* v. *Hart, supra* Lord Coleridge C.J. stated:—

"I do not say that proof of actual knowledge on the part of the landlord is necessary. Slight evidence might be sufficient to satisfy the magistrates that the landlord might have known what was taking place if he had pleased, but where no actual knowledge is shown there must, as it seems to me, be something to show either that the gaming took place with the knowledge of some person clothed with the landlord's authority, or that there was something like connivance on his part, that he might have known but purposely abstained from knowing."

It seemed to me that the respondent, as the manager of the New World Park, where entertainments of various sorts are given, must from that fact alone, quite apart from any question of ignorance of the law being no excuse, have been well aware of the provisions of the Ordinance relating to children and young persons taking part in public entertainments. In the event in this case any doubts on this score were put beyond question by his application for a licence in respect of Lim Boon Heng.

The respondent's application for a licence for Lim Boon Heng having been refused, it seems to me that it was incumbent upon him to see that the Equinox Singing Troupe did not do anything which would amount to a contravention of the provisions of the Ordinance.

The performance of the troupe being in a public place nothing was easier than to keep a check on what was going on. It was not like a game of cards taking place behind closed doors in a public house. The performance was out in the open. And when the labour department officers went to check it appears to have been clear to them that children or young persons were taking part in a public entertainment.

There was evidence from the father of Lim Boon Heng, who for some reason best known to themselves was called by the prosecution, that he had been sitting in the audience with Lim Boon Heng and it was only at the request of the audience that the child had performed. But it did not appear how the audience knew who Lim Boon Heng was, and there was no such evidence regarding Lim Kim Hock.

The evidence was that at about 8.40 p.m. on the night in question Lim Kim Hock sang a song in Chinese. About 8.50 p.m. Lim Boon Heng played two numbers on the drums. Both of them were introduced in his turn by someone who was called the organiser, whose job appeared to be to introduce the turns to the audience.

The show was taking place in what was referred to as the hall, and the organiser was stated to have been at the back of the stage at the hall, while the respondent was at the front of the hall at the entrance.

It seemed to me that there was abundant evidence from which it could be inferred, in the absence of any explanation, that the respondent knew what was going on on the stage or that he might have known what was taking place if he had pleased.

I think that the learned magistrate was misled by the reference to *Lim Teck Heng's* case, *supra*. The question which was remitted to the High Court under the provisions of section 317 of the Criminal Procedure Code for decision in that case was whether the wording of section 313(b) of the Merchant Shipping Ordinance, 1952, which uses the word "suffers", excluded *mens rea* by necessary implication. It was held that it did not, although it turned out that on the particular facts of that case the question did not arise. But a case is authority for what it decides and because the wording of that section does not exclude *mens rea*, it does not necessarily follow that actual knowledge on the part of the accused must be proved. The question which arises in such circumstances as in the present case, is whether the prosecution have proved that the accused (the respondent in this case) had actual knowledge or whether it can be inferred, from the facts that they have proved, that he connived at what was going on.

In the absence of any explanation I was of the opinion that such an inference could be drawn in this case, and accordingly I allowed the appeal, set aside the order of acquittal, and remitted the case to the magistrates' court for the respondent to be called upon for his defence.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

CHAND SINGH v. BHAGWAN SINGH

[F.C. (Thomson L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) April 9, 1965]

[Singapore— Federal Court Civil Appeal No. 70 of 1964]

Practice and Procedure — Appeal — Appeal against decision of trial judge based entirely on his view of facts and evidence — Principle applicable.

This was an appeal against the decision of the trial judge who dismissed a claim by the plaintiff for the repayment of principal and interest for money lent on a promissory note. The evidence of the plaintiff and the defendant at the trial was conflicting and the trial judge accepted the evidence of the defendant.

Held: in such a case it is only if the appellate court finds that the trial judge was plainly wrong in his evaluation of the evidence that the appellate court will interfere with his finding.

Cases referred to:—

(1) *Clarke* v. *Edinburgh and District Tramways Co. Ltd.* [1919] S.C. (H.L.) 35, 37.

(2) *Thomas* v. *Thomas* [1947] A.C. 484, 488.

(3) *Tan Kheng Heng* v. *Heap Moh Steamship Co. Ltd.* [1964] M.L.J. 87, 92.

FEDERAL COURT.

S. H. D. Elias for the appellant.

R. Murugason for the respondent.

Wee Chong Jin C.J. (Singapore) (delivering oral judgment): The appellant commenced an action in the High Court against the defendant for repayment of principal and interest and arrears of interest for money lent on a promissory note.

The defence to the action or claim was that the money had been paid by the sale to the plaintiff/appellant of a taxi belonging to the respondent.

Mr. Justice Ambrose after the hearing of the action dismissed the claim. Hence this appeal.

As I understand the arguments put before us to-day it is submitted that the onus of proof being on the defendant, the promissory note still being in the possession of the plaintiff/appellant, on all the evidence adduced at the trial, the trial judge should have found that the defendant had failed to discharge that onus of proof on him.

On the arguments presented before us, it is in my view quite clearly an appeal where the appellant is trying to persuade this court, an appellate court, to upset the decision of a trial judge based entirely on his view of the facts and the evidence before him.

The principles under which an appellate court acts in such a case has been laid down over and over again and I can put it in just one plain sentence so far as the circumstances of this appeal is concerned. It is only if this court finds the trial judge was plainly wrong in his evaluation of the evidence that this court will interfere with his finding.

Nothing that counsel for the appellant has drawn my attention to so far as the evidence is concerned, has persuaded me to arrive at the conclusion that Mr. Justice Ambrose was plainly wrong when he found on the evidence that the balance of principal and interest due on the promissory note had been paid before the action was commenced. In so far as the evidence is concerned, we have here a case where essentially the plaintiff/appellant tells one story and on the other hand we have the defendant with four witnesses, some of whom are quite clearly independent and unbiassed witnesses who tell a story diametrically opposed to that told by the appellant. The trial judge has accepted the evidence relating to the circumstances as to how the money